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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Lisa M. Redd,) Case No. CV 11-5989-MLG
)
Plaintiff,) MEMORANDUM OPINION AND ORDER
)
v.)
)
MICHAEL J. ASTRUE,)
)
Commissioner of the Social)
Security Administration,)
)
Defendant.)
_____)

Plaintiff Lisa M. Redd seeks judicial review of the Commissioner's denial of her application for disability insurance benefits ("DIB"). For the reasons stated below, the decision of the Commissioner is affirmed and the action is dismissed with prejudice.

I. BACKGROUND

Plaintiff was born on April 30, 1968. (AR at 62). She has relevant work experience as a home attendant and a waitress. (AR at 29). Plaintiff filed an application for DIB on January 6, 2009, alleging disability beginning November 1, 2007. (AR at 23). The Social Security Administration denied Plaintiff's application

1 initially on April 2, 2009. (AR at 23).

2 A hearing was held before Administrative Law Judge ("ALJ")
3 David G. Marcus on May 24, 2010. (AR at 23). Plaintiff, appearing
4 with an attorney, testified at the hearing, as did a vocational
5 expert ("VE"). (AR at 23). The ALJ issued a decision on July 7,
6 2010, denying Plaintiff's application. (AR at 18-25). The ALJ found
7 that although Plaintiff suffers from bipolar disorder, a mood
8 disorder not otherwise specified, and asthma, she has the residual
9 functional capacity ("RFC") to perform a reduced range of light
10 work "involving simple repetitive tasks with only occasional
11 interaction with the public, coworkers and supervisors." Relying on
12 the testimony of the VE, the ALJ determined that the RFC allows her
13 to perform work that exists in significant numbers in the national
14 economy. (AR at 30). The Appeals Council denied review on June 17,
15 2011 (AR at 1-3).

16 Plaintiff commenced this action for judicial review on July
17 27, 2011. The parties filed a joint statement of disputed issues
18 ("Joint Stip.") on March 1, 2012. Plaintiff contends that the ALJ
19 improperly assessed her RFC for the mental requirements of work
20 activity as described by consulting physician Dr. Larisa Levin, and
21 that he gave insufficient weight to the opinion of Yoshado Lang,
22 Ph.D., the treating psychologist. (Joint Stip. at 4-9). Plaintiff
23 seeks reversal and payment of benefits, or alternatively, remand
24 for further administrative proceedings. (Joint Stip. at 17). The
25 Defendant requests that the ALJ's decision be affirmed or, if the
26 Court finds that the ALJ committed reversible error, that the Court
27 remand for further administrative proceedings. (Joint Stip. at 18).

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1 **II. STANDARD OF REVIEW**

2 Under 42 U.S.C. § 405(g), a district court may review the
3 Commissioner's decision to deny benefits. The decision of the
4 Commissioner or ALJ must be upheld unless "the ALJ's findings are
5 based on legal error or are not supported by substantial evidence
6 in the record as a whole." *Tackett v. Apfel*, 180 F.3d 1094, 1097
7 (9th Cir. 1990); *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir.
8 2007). Substantial evidence means such evidence as a reasonable
9 person might accept as adequate to support a conclusion. *Richardson*
10 *v. Perales*, 402 U.S. 389, 401 (1971); *Widmark v. Barnhart*, 454 F.3d
11 1063, 1066 (9th Cir. 2006). It is more than a scintilla, but less
12 than a preponderance. *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880,
13 882 (9th Cir. 2006). To determine whether substantial evidence
14 supports a finding, the reviewing court "must review the
15 administrative record as a whole, weighing both the evidence that
16 supports and the evidence that detracts from the Commissioner's
17 conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996).
18 "If the evidence can support either affirming or reversing the
19 ALJ's conclusion," the reviewing court "may not substitute its
20 judgment for that of the ALJ." *Robbins*, 466 F.3d at 882.

21
22 **III. Analysis**

23 **A. The ALJ Properly Evaluated Plaintiff's Mental Impairments**

24 Plaintiff contends that the ALJ's RFC determination did not
25 adequately take into account the mental limitations assessed by the
26 psychiatric examiner Larisa Levin, M.D. (Joint Stip. at 4-5). She
27 argues that to the extent the ALJ's RFC determination constituted
28 a rejection of the opinion of Dr. Levin, he should have stated

1 specific and legitimate reasons for the rejection. (Joint Stip. at
2 5).

3 Dr. Levin evaluated Plaintiff and summarized her findings in
4 a report dated March 10, 2009. (AR at 183-89). In the report, Dr.
5 Levin described Plaintiff as "moderately impaired" in the following
6 six areas of function: (1) ability to relate and interact with
7 supervisors, coworkers, and the public; (2) ability to maintain
8 concentration and attention, persistence and pace; (3) her ability
9 to associate with day-to-day work activity, including attendance
10 and safety; (4) ability to adapt to the stresses common to a normal
11 work environment; (5) ability to maintain regular attendance in the
12 work place and perform work activities on a consistent basis; and
13 (6) ability to perform work activities without special or
14 additional supervision. (AR at 187-88).

15 In his decision, the ALJ stated that he accorded significant
16 weight to Dr. Levin's findings. (AR at 28). The ALJ also gave great
17 weight to the opinion of the state agency psychiatrist R. Tashjian,
18 M.D., who reviewed Dr. Levin's opinion and made the finding that
19 Plaintiff "can complete simple repetitive tasks with limited social
20 contact." (AR at 190). Dr. Tashjian's findings were reflected in
21 the ALJ's RFC determination that Plaintiff could perform a reduced
22 range of light work "involving simple repetitive tasks with only
23 occasional interaction with the public, coworkers and supervisors."
24 Plaintiff argues that this RFC did not adequately incorporate Dr.
25 Levin's findings in areas two through six, listed above. (Joint
26 Stip. at 6).

27 The Ninth Circuit has held that an ALJ may rely on the opinion
28 of a nonexamining doctor to "translate" mental limitations into

1 concrete restrictions in the RFC assessment. *Stubbs-Danielson v.*
2 *Astrue*, 539 F.3d 1169, 1173 (9th Cir. 2008). In *Stubbs-Danielson*,
3 an evaluating physician identified the claimant as moderately or
4 mildly limited in several mental functioning areas, but did not
5 assess whether she could perform work on a sustained basis. *Id.* at
6 1173. The state agency reviewing psychologist also identified
7 moderate limitations in several mental functioning areas, and
8 concluded that the claimant retained the ability to "carry out
9 simple tasks." *Id.* The claimant argued on appeal to the Ninth
10 Circuit that the ALJ's finding of a RFC for simple, routine,
11 repetitive work failed to capture the limitations identified by the
12 evaluating physician. Concluding that the ALJ's RFC finding
13 properly incorporated the identified limitations, the Court
14 explained:

15 The ALJ translated *Stubbs-Danielson's* condition,
16 including the pace and mental limitations, into the only
17 concrete restrictions available to him-[the state agency
18 reviewing psychologist] recommended restriction to "simple
19 tasks." This does not, as *Stubbs-Danielson* contends,
20 constitute a rejection of [the evaluating physician's]
21 opinion. . . . As two of our sister circuits have
22 recognized, an ALJ's assessment of a claimant adequately
23 captures restrictions related to concentration,
24 persistence, or pace where the assessment is consistent
25 with restrictions identified in the medical testimony. See
26 *Howard v. Massanari*, 255 F.3d 577, 582 (8th Cir. 2001)
27 (where state psychologist both identified claimant as
28 having deficiencies of concentration, persistence or pace

1 and pronounced claimant possessed the ability to "sustain
2 sufficient concentration and attention to perform at least
3 simple, repetitive, and routine cognitive activity without
4 severe restriction of function," ALJ's hypothetical
5 including ability to perform "simple, routine, repetitive
6 tasks" adequately, captured claimant's deficiencies in
7 concentration persistence or pace); *Smith v. Halter*, 307
8 F.3d 377, 379 (6th Cir. 2001) (where ALJ's hypothetical
9 incorporated concrete restrictions identified by examining
10 psychiatrist regarding quotas, complexity, and stress, ALJ
11 did not err in failing to include that claimant suffered
12 from deficiencies in concentration, persistence, or pace).
13 539 F.3d at 1174.

14 Here, the ALJ "translated [Plaintiff's] condition ... into the
15 only concrete restrictions available to him ... 'simple tasks.'" *Id.* As *Stubbs-Danielson* and numerous decisions have held, an RFC
16 for "simple tasks" adequately captures limitations in the areas of
17 concentration, attention, persistence, pace, and adaption. *See id.*;
18 *Pao Mee Xiong v. Astrue*, No. 1:10cv01135, 2011 WL 3322828, at *18
19 (E.D.Cal. Aug. 2, 2011) (RFC of simple, repetitive tasks adequately
20 takes into account limitations in concentration, persistence, and
21 pace); *Dupree v. Astrue*, No. CV 10-3146-JCG, 2011 WL 651886, at *5
22 (C.D.Cal. Feb. 10, 2011) (same). As to the other areas of moderate
23 impairment identified by Dr. Levin, including adaption to stress,
24 attendance, and need for supervision, there is simply no indication
25 from any medical source that such limitations prevent Plaintiff
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1 from engaging in simple, repetitive tasks.¹ Therefore, it was
2 appropriate for the ALJ to rely on the findings of Dr. Tashjian in
3 making his RFC determination.

4 Accordingly, the ALJ's determination that Plaintiff's mental
5 limitations were adequately captured by an RFC assessment
6 restricting Plaintiff to simple repetitive tasks with only
7 occasional interaction with the public, coworkers, and supervisors
8 was supported by substantial evidence.

9 **B. The ALJ Gave Appropriate Weight to the Treating**
10 **Psychologist's Opinion**

11 Plaintiff contends that the ALJ improperly rejected the
12 opinion of her treating psychologist, Dr. Lang. (Joint Stip. at 6-
13 8). Dr. Lang began treating Plaintiff for mental illness in 2008.
14 (AR at 215-65, 403). In a Mental Residual Functional Capacity
15 Questionnaire completed on April 6, 2010 (the "Questionnaire"), Dr.
16 Lang diagnosed Plaintiff as having bipolar disorder, another mood
17 disorder, and asthma, with a Global Assessment of Functioning
18 ("GAF") score between 58 and 60. (AR at 403). He found that
19 Plaintiff had extreme limitations in multiple areas of work-related
20 functions and marked or moderate limitations in several others.²

21
22 ¹ To the extent that the opinion of Dr. Lang supports
23 Plaintiff's argument that these areas of impairment prevent her
24 from performing simple repetitive tasks, the ALJ properly
25 rejected the extreme limitations assessed by Dr. Lang, as
26 discussed more fully in the following section.

27 ² The Questionnaire contains the following definitions: (1)
28 "Extreme: there is major limitation in this area. There is no
useful ability to function in this area"; (2) "Marked: there is
serious limitation in this area. There is substantial loss in the
ability to effectively function"; and (3) "Moderate: there is

1 (AR at 406-07). He also noted that within a two hour period "the
2 client reported to need 4 breaks lasting 10-15 minutes," and that
3 she would need to be absent from work more than four days per
4 month. (AR at 407). In contrast to Dr. Lang's findings of extreme
5 and marked limitations, examining psychiatrist Dr. Levin concluded
6 that Plaintiff suffered from only mild or moderate limitations. (AR
7 at 183-88).

8 An ALJ should generally accord greater probative weight to a
9 treating physician's opinion than to opinions from non-treating
10 sources. See 20 C.F.R. § 404.1527(d)(2). The ALJ must give specific
11 and legitimate reasons for rejecting a treating physician's opinion
12 in favor of a non-treating physician's contradictory opinion. *Orn*
13 *v. Astrue*, 495 F.3d 625 (9th Cir. 2007); *Lester v. Chater*, 81 F.3d
14 821, 830 (9th Cir. 1996). However, the ALJ need not accept the
15 opinion of any medical source, including a treating medical source,
16 "if that opinion is brief, conclusory, and inadequately supported
17 by clinical findings." *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th
18 Cir. 2002); accord *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th
19 Cir. 2001). If a treating professional's opinion is contradicted by
20 an examining professional's opinion, which is supported by
21 different independent clinical findings, the Commissioner may
22 resolve the conflict by relying on the latter. See *Andrews v.*
23 *Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995); see also *Orn v.*
24 *Astrue*, 495 F.3d 625, 632 (9th Cir. 2007) (ALJ may reject opinion
25 of treating physician in favor of examining physician whose opinion

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28 moderate limitation in this area but the individual is still able
to function satisfactorily."

1 rests of independent clinical findings).

2 The ALJ stated that he was giving the opinion of Dr. Levin
3 significant weight and that while he would give the assessment of
4 Dr. Lang some weight, "little weight is given to the extreme
5 limitations set forth in the recent medical source statement." (AR
6 at 29). The ALJ then provided specific and legitimate reasons for
7 refusing to give Dr. Lang's opinion controlling weight, which were
8 supported by substantial evidence in the record.

9 One of the reasons the ALJ gave was that the responses "are
10 essentially the claimant's responses and not the signing doctor's
11 professional opinion," citing to the answer Dr. Lang provided
12 regarding breaks, which stated "the client reported to need four
13 breaks [within a two-hour period]." (AR at 29, 407). It is the
14 responsibility of the ALJ to determine credibility, *see Magallanes*
15 *v. Brown*, 881 F.2d 747, 750 (9th Cir. 1989), and here, the ALJ
16 determined that Plaintiff's statements regarding her subjective
17 complaints were not credible, a determination which has not been
18 challenged by Plaintiff in this action. (AR at 28). Therefore, it
19 was reasonable for the ALJ to doubt the veracity of findings that
20 simply relayed Plaintiff's complaints. *See Morgan v. Comm'r of Soc.*
21 *Sec.*, 169 F.3d 595, 602 (9th Cir. 1999) ("A physician's opinion of
22 disability premised to a large extent upon the claimant's own
23 accounts of his symptoms and limitations may be disregarded where
24 those complaints have been properly discounted.") (citations and
25 internal quotation marks omitted). Plaintiff argues that because
26 Dr. Lang specifically attributed some of the answers on the
27 Questionnaire to Plaintiff, this demonstrates that answers not so
28 attributed must be Dr. Lang's own opinion. (AR at 7-8). This

1 argument is not persuasive. The vast majority of the Questionnaire
2 contains "check-box" questions, which have no space for a notation
3 regarding whether the answers were based on Plaintiff's subjective
4 reports. (AR at 403-08).

5 The ALJ also rejected Dr. Lang's findings of extreme
6 limitations as inconsistent with the GAF score of 58. (AR at 29).
7 The GAF Scale provides a measure for an individual's overall level
8 of psychological, social, and occupational functioning. Am.
9 Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental*
10 *Disorders* 30 (4th ed. 1994). The Scale "may be particularly useful
11 in tracking the clinical progress of individuals in global terms,
12 using a single measure." *Id.* A GAF of 51-60 indicates moderate
13 symptoms (e.g., flat affect and circumstantial speech, occasional
14 panic attacks) or moderate difficulty in social, occupational or
15 school functioning (e.g., few friends, conflicts with peers or
16 co-workers). While Plaintiff is correct that a GAF score is not
17 determinative of mental disability or limitation for social
18 security purposes, see 65 Fed.Reg. 50746, 50764-50765 (Aug. 21,
19 2000), it nevertheless may help guide an ALJ's determination in
20 evaluating the severity of a claimant's mental impairments. *Howard*
21 *v. Comm'r of Soc. Sec.*, 276 F.3d 235, 241 (6th Cir. 2002) ("a GAF
22 score may be of considerable help to the ALJ in formulating the
23 RFC"); *Orellana v. Astrue*, 2008 WL 398834, at *9 (E.D.Cal. Feb.12,
24 2008) (same). Here, the ALJ used the GAF score not to directly
25 determine Plaintiff's RFC, but instead to analyze the internal
26 consistency of Dr. Lang's opinion. As Plaintiff's high GAF score
27 indicated only moderate difficulty in functioning, it was at odds
28 with Dr. Lang's findings that Plaintiff was extremely impaired in

multiple areas of functioning. Thus, it was reasonable for the ALJ to consider this factor in failing to give controlling weight to Dr. Lang's findings. See *Matney v. Sullivan*, 981 F.2d 1016, 1020 (9th Cir. 1992) (inconsistencies in doctor's findings represent specific and legitimate reasons for the ALJ to reject such findings); see also *Macri v. Chater*, 93 F.3d 540, 544 (9th Cir. 1996) ("the ALJ is entitled to draw inferences logically flowing from the evidence") (internal quotation marks omitted).³

Accordingly, the ALJ's decision not to give Dr. Lang's opinion controlling weight is supported by substantial evidence and no relief is warranted on this claim.

IV. Conclusion

For the reasons stated above, the decision of the Social Security Commissioner is **AFFIRMED** and the action is **DISMISSED** with prejudice.

Dated: March 13, 2012



Marc L. Goldman
United States Magistrate Judge

³ The ALJ also provided a third reason for rejecting Dr. Lang's opinion - that the Questionnaire was inconsistent with later correspondence dated May 17, 2010. (AR at 29). However, there is nothing inconsistent between the Questionnaire and the May 17, 2010 letter. Nevertheless, this error is harmless given that the ALJ provided two other well-supported reasons for not giving Dr. Lang's opinion controlling weight. See *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (harmless error rule applies to review of administrative decisions regarding disability)